

STATE OF MICHIGAN
COURT OF APPEALS

RAHEEM AKBAR, ARTHUR WARD, and
GWENDOLYN WARD,

UNPUBLISHED
April 19, 2011

Plaintiffs-Appellants,

v

CITY OF DETROIT, JAMES FISHER, and
CORY KARSSSEN,

No. 294610
Wayne Circuit Court
LC No. 08-104771-NO

Defendants-Appellees.

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

This case arises from the arrest and incarceration of plaintiff Raheem Akbar (Akbar) for his alleged involvement in a shooting. Defendants are police officers employed by the City of Detroit. Defendant Fisher led the investigation into the shooting. Defendant Fisher's interviews of eyewitnesses led him to believe that plaintiff Akbar and his brother, Rashad Akbar (Rashad), were involved in the shooting. Pursuant to a warrant request submitted by defendant Fisher to the prosecution, plaintiff Akbar was eventually apprehended and charged with several felonies, including assault with intent to murder, assault with intent to do great bodily harm, and felony-firearm. The request indicated:

Upon further investigation it was determined that [Roderick Bridges] was having problems with teenagers playing on the back door of his residence which was on Flanders street. [Bridges] then phoned Rashad and Raheem [Akbar] to come over and bring their guns to handle the problem. Rashad and Raheem [Akbar] arrived over to the location and began to argue with Derrick Dexter. Rashad then hit Dexter with his fist in the face. Later as Rashad and Raheem [Akbar] began to leave the location, Rashad leaned out of the vehicle they were in and fired numerous shots towards the address of 11762 Flanders which is where the victims were near, with the shots taking effect. All of the defendants then fled the scene.

After being incarcerated for over four months, the court dismissed the charges against plaintiff Akbar pursuant to a request by the prosecution and he was released. Plaintiffs then filed

this lawsuit against the City of Detroit and the individual officers involved in his arrest and incarceration and in the subsequent search for Rashad, the suspected shooter. Plaintiffs raised claims of malicious prosecution, assault and battery, false arrest, negligence, gross negligence, intentional and negligent infliction of emotional distress, and numerous civil rights violations.¹ In support of their tort claims, plaintiffs alleged several instances of improper conduct by defendants during the investigation, including effectuating the arrest and detention of plaintiff Akbar without probable cause, providing false and misleading information to support probable cause for the charges, attempting to conduct warrantless searches of the home of plaintiff Akbar's parents, plaintiffs Arthur and Gwendolyn Ward, coercing witnesses, harassing and threatening plaintiffs, and improperly detaining plaintiff Arthur Ward without probable cause.

Following dismissal of defendant City of Detroit on the basis of governmental immunity, the individual officers moved for summary disposition of the claims against them alleging that no genuine issue of material fact supported plaintiffs' claims. The trial court granted defendant officers' motion and dismissed plaintiffs' state claims in their entirety, prompting this appeal.

Plaintiffs argue that genuine issues of material fact exist regarding their claims of malicious prosecution, false arrest/imprisonment, intentional and negligent infliction of emotional distress, and gross negligence.² We disagree.

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Robinson v Ford Motor Co*, 277 Mich App 146, 150; 744 NW2d 363 (2007). Although the court did not specify the basis for its ruling, because the parties attached and referenced deposition testimony and documentary evidence beyond the pleadings, and the court referred to these facts, we presume that the court granted defendants' motion under (C)(10), which "tests the factual sufficiency of the plaintiff's claim." *Id.* In reviewing a motion under MCR 2.116(C)(10), "[t]he trial court must consider the affidavits, pleadings, depositions, admissions, and any other evidence submitted by the parties in a light most favorable to the nonmoving party." *Id.* "Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law." *Id.* at 150-151. "A question of fact exists when reasonable minds could differ regarding the conclusions to be drawn from the evidence." *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 126; 715 NW2d 398 (2006).

First, we find that summary disposition of plaintiff Akbar's claim of malicious prosecution was proper as a matter of law because the undisputed evidence established that his arrest was supported by probable cause. See *Walsh v Taylor*, 263 Mich App 618, 632-633; 689 NW2d 506 (2004). To establish a claim of malicious prosecution, plaintiff must prove that "(1) the defendant has initiated a criminal prosecution against him, (2) the criminal proceedings

¹ The federal district court adjudicated and summarily dismissed plaintiffs' civil rights violations, with the exception of their claim of unlawful search and seizure. The district court declined to exercise supplemental jurisdiction over plaintiffs' state claims.

² Plaintiffs do not challenge the trial court's summary dismissal of their claims for assault and battery and violations of the Michigan constitution.

terminated in his favor, (3) the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice.” *Walsh*, 263 Mich App at 632-633 (citation omitted); *Payton v City of Detroit*, 211 Mich App 375, 394-395; 536 NW2d 233 (1995).

It is not disputed that criminal proceedings were initiated against plaintiff Akbar because he was arrested and charged with multiple felonies in connection with the shooting.³ It is also not disputed that the proceedings terminated in his favor because the court dismissed the charges at the insistence of the prosecutor. “[D]ismissal of criminal charges at the instance of the prosecutor or the complaining witness implies a lack of reasonable ground for prosecution and is a favorable termination of the proceeding for purposes of a malicious prosecution cause of action.” *Cox v Williams*, 233 Mich App 388, 393; 593 NW2d 173 (1999).

However, plaintiff Akbar could not maintain his malicious prosecution claim because he failed to establish, as a matter of law, that defendant Fisher acted without probable cause in initiating the criminal proceedings against him. “It is well settled that one who makes a full and fair disclosure to the prosecutor is not subject to an action for malicious prosecution.” *Payton*, 211 Mich App at 395. As such, “the only situation in which an action for malicious prosecution would properly lie is where a police officer knowingly swears to false facts in a complaint, without which there is no probable cause.” *Id.*, quoting *King v Arbic*, 159 Mich App 452, 466; 406 NW2d 852 (1987). “To constitute probable cause . . . , there must be such reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in the belief that the person arrested is guilty of the offense charged.” *Walsh*, 263 Mich App at 628, quoting *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 377; 572 NW2d 603 (1998).

We agree with the trial court that defendant Fisher’s warrant request, on its face, indicating plaintiff Akbar’s connection to the shooting, formed a “reasonable suspicion” that Akbar was a participant in the felonious assaults to support probable cause to arrest him under a theory of aiding and abetting. See *Walsh*, 263 Mich App at 628, 630-631. We fail to find, contrary to plaintiffs’ assertions, any evidence that would give rise to the inference that defendant Fisher knowingly provided false or misleading information in the warrant request, without which the prosecutor could not have concluded that there was probable cause. See *Payton*, 211 Mich App at 395. Instead, the evidence suggests that the information in the warrant request was truthful, supported by eyewitness accounts, and fully disclosed the results of defendant Fisher’s investigation. Because probable cause supported plaintiff Akbar’s arrest and detention and there is no evidence to suggest that defendant Fisher knowingly included false or

³ We assume that defendant Fisher initiated the criminal proceedings against plaintiff Akbar by submitting the warrant request to the prosecution, which formed the basis for the criminal charges. There was no evidence that defendant Karssen had a role in preparing or submitting the warrant request, and thus, defendant Karssen did not initiate the criminal proceedings and could not be held liable for malicious prosecution as a matter of law. (“[A]n officer who merely executes a warrant that is valid on its face is protected from liability” *Flonex v Dalman*, 199 Mich App 396, 404; 502 NW2d 725 (1993).)

misleading facts in the warrant request, we conclude that summary disposition on this claim was proper. See *Walsh*, 263 Mich App at 632-633; *Payton*, 211 Mich App at 395.

Next, summary disposition of plaintiff Akbar's claim of false arrest/imprisonment was also proper as a matter of law. To establish a claim of false arrest, "plaintiff[s] had to show that [the officers] participated in an illegal and unjustified arrest, and that [the officers] lacked probable cause to do so." *Walsh*, 263 Mich App at 626, citing *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003). Because the undisputed evidence established that plaintiff Akbar's arrest was legal, i.e., pursuant to a facially valid warrant and supported by probable cause, his claim must fail. See *id.*

We also find that the brief detention of plaintiff Arthur Ward (Ward) failed to rise to the level of an illegal or unjustified arrest to support his claim of false arrest. "A brief, on-the-scene detention of an individual is not a violation of the Fourth Amendment as long as the officer can articulate a reasonable suspicion for the detention." *People v Custer*, 465 Mich 319, 327; 630 NW2d 870 (2001), citing *Michigan v Summers*, 452 US 692, 699-700; 101 S Ct 2587; 69 L Ed 2d 340 (1981). "In order to demonstrate reasonable suspicion, an officer must have specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Custer*, 465 Mich at 328. "The reasonableness of an officer's suspicion is determined case by case on the basis of the totality of all the facts and circumstances." *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001).

Under the totality of the circumstances indicating that plaintiff Ward's sons were suspects in a shooting being investigated by defendant officers, that defendants observed plaintiff Ward walking with a man whom they reasonably could have believed to be his son, the man fled after defendants approached them, and the man did not have identification, it was reasonable for defendant Fisher to temporarily detain Ward and his friend to ascertain his identify. *Custer*, 465 Mich at 327. We fail to find that a trier of fact could reasonably conclude, on these facts, that plaintiff Ward's detention was unjustified or illegal, thereby precluding his claim of false arrest and/or imprisonment. See *Walsh*, 263 Mich App at 626 (citation omitted). Accordingly, summary disposition of plaintiff Ward's claim was proper.

Regarding plaintiffs' claim of intentional infliction of emotional distress, we find that, as a matter of law, plaintiffs failed to establish that the defendant officers' conduct met the requisite "extreme and outrageous" conduct necessary to justify recovery for intentional infliction of emotional distress. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). "To establish a prima facie claim of intentional infliction of emotional distress, the plaintiff must present evidence of (1) the defendant's extreme and outrageous conduct, (2) the defendant's intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff." *Walsh*, 263 Mich App at 634 (citation omitted). Bearing in mind the "high" threshold for showing extreme and outrageous conduct, *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004), on the facts of this case defendants' conduct was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Walsh*, 263 Mich App at 634, quoting *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003). Plaintiffs also failed to present sufficient evidence to demonstrate that they suffered such "severe" emotional distress from defendants' alleged improper conduct "that no reasonable man could be expected to endure." *Haverbush v Powelson*, 217 Mich App 228, 235; 551 NW2d 206

(1996), quoting 1 Restatement Torts, 2d, ¶ 46, Comment J, pp 77-78. Moreover, because defendant Fisher had probable cause to believe that plaintiff Akbar had committed a crime, he cannot be held liable, as a matter of law, for the emotional distress relative to his request for a warrant. See *Walsh*, 263 Mich App at 634 (citation omitted). The court did not err in summarily dismissing plaintiffs' claim of intentional infliction of emotional distress.

Regarding plaintiffs' claim of negligent infliction of emotional distress, this Court has limited such claims to situations involving the plaintiff's witnessing negligent injury to an immediate family member and suffering severe mental distress causing actual physical harm. *Taylor v Kurapati*, 236 Mich App 315, 360; 600 NW2d 670 (1999). Plaintiffs failed to allege or establish that their emotional distress resulted in "actual physical harm" or injury or that they ever witnessed defendants inflict injury on a member of their immediate family of a nature to cause severe mental disturbance. See *id.* Accordingly, plaintiffs' claim of negligent infliction of emotional distress must fail, making summary disposition proper.

Moreover, it is apparent that plaintiffs' claim of negligent infliction of emotional distress was premised on the same facts supporting their claim of intentional infliction of emotional distress. "This Court has rejected attempts to transform claims involving elements of intentional torts into claims of gross negligence." *VanVorous*, 262 Mich App at 483-484. Accordingly, dismissal of plaintiffs' negligent infliction of emotional distress claim was also proper under MCR 2.116(C)(8) for failure to state a claim upon which relief can be granted.

Plaintiffs have abandoned their final claim on appeal that summary disposition of their gross negligence claim was improper because they failed to adequately brief the claim. Plaintiffs fail to specify how the defendant officers' conduct was reckless or how the conduct caused the alleged injury. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims or unravel and elaborate for him his arguments." *MOSES, Inc v Southeast Mich Council of Gov'ts*, 270 Mich App 401, 417; 716 NW2d 278 (2006) (citation omitted). Regardless, as we previously noted, "this Court has rejected attempts to transform claims involving elements of intentional torts into claims of gross negligence." *VanVorous*, 262 Mich at 483-484. Accordingly, dismissal of plaintiffs' gross negligence claim was proper.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens